

HOUSE BILL No. 1462

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-3-36; IC 20-28; IC 20-33-8; IC 34-30-2-84.7.

Synopsis: Criminal history checks. Exempts a postsecondary educational institution from paying a fee for a limited criminal history record of a student in the institution's school of education before the student begins the student's field or classroom experience. Requires an expanded criminal history background check for a person seeking to obtain or renew a teaching license or certificate. Gives civil immunity for certain school employees for certain acts or omissions during the course of their employment. Adds the professional standards division to the list of entities to be given notice when a licensed employee of a school is convicted of certain felonies and adds possession of child pornography to the list of felonies to be reported.

Effective: Upon passage; July 1, 2009; January 1, 2010.

Kersey, Porter

January 14, 2009, read first time and referred to Committee on Education.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1462

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-13-3-36, AS AMENDED BY P.L.2-2007,
2 SECTION 147, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2010]: Sec. 36. (a) The department may
4 not charge a fee for responding to a request for the release of a limited
5 criminal history record if the request is made by a nonprofit
6 organization:

7 (1) that has been in existence for at least ten (10) years; and

8 (2) that:

9 (A) has a primary purpose of providing an individual
10 relationship for a child with an adult volunteer if the request
11 is made as part of a background investigation of a prospective
12 adult volunteer for the organization;

13 (B) is a home health agency licensed under IC 16-27-1;

14 (C) is a community mental retardation and other
15 developmental disabilities center (as defined in IC 12-7-2-39);

16 (D) is a supervised group living facility licensed under
17 IC 12-28-5;



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(E) is an area agency on aging designated under IC 12-10-1;
 (F) is a community action agency (as defined in IC 12-14-23-2);
 (G) is the owner or operator of a hospice program licensed under IC 16-25-3; or
 (H) is a community mental health center (as defined in IC 12-7-2-38).

(b) Except as provided in subsection (d), the department may not charge a fee for responding to a request for the release of a limited criminal history record made by the department of child services or the division of family resources if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 31-27.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, special education cooperative, or nonpublic school (as defined in IC 20-18-2-12) as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) As used in this subsection, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution. The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made:

- (1) by a state agency; and
- (2) through the computer gateway that is administered by the office of technology established by IC 4-13.1-2-1.

(e) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the Indiana professional licensing agency established by IC 25-1-5-3 if the request is:

- (1) made through the computer gateway that is administered by the office of technology; and
- (2) part of a background investigation of a practitioner or an individual who has applied for a license issued by a board (as defined in IC 25-1-9-1).

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(f) The department may not charge a church or religious society a fee for responding to a request for the release of a limited criminal history record if:

(1) the church or religious society is a religious organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;

(2) the request is made as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer; and

(3) the employee or volunteer works in a nonprofit program or ministry of the church or religious society, including a child care ministry registered under IC 12-17.2-6.

(g) The department may not charge the school of education of a public or private postsecondary educational institution a fee for responding to a request for the release of a limited criminal history record if the request is made as part of a background investigation of a student before or after the student begins the student's field or classroom experience.

SECTION 2. IC 20-28-1-6.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 6.2. "Expanded criminal history check" means a criminal history background check of an individual that includes:**

(1) a:

(A) search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided during the seven (7) years preceding the date of the background check;

(B) search of the records maintained by all counties or similar governmental units in another state, if the individual who is the subject of the background check resided in another state during the seven (7) years preceding the date of the background check; and

(C) check of:

(i) sex offender registries in all fifty (50) states; or

(ii) the National Sex Offender Registry maintained by the United States Department of Justice; or

(2) a:

(A) national criminal history background check (as defined in IC 10-13-3-12); and

(B) check of:

(i) sex offender registries in all fifty (50) states; or

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(ii) the National Sex Offender Registry maintained by the United States Department of Justice.

SECTION 3. IC 20-28-5-8, AS AMENDED BY P.L.151-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) This section applies when a prosecuting attorney knows that a licensed employee of a public school or a nonpublic school has been convicted of an offense listed in subsection (c). The prosecuting attorney shall immediately give written notice of the conviction to the following:

(1) The state superintendent.

(2) Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee or the equivalent authority if a nonpublic school employs the licensed employee.

(3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation.

(4) The division.

(b) The superintendent of a school corporation, presiding officer of the governing body, or equivalent authority for a nonpublic school shall immediately notify the state superintendent when the individual knows that a current or former licensed employee of the public school or nonpublic school has been convicted of an offense listed in subsection (c).

(c) The department, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the department to have been convicted of any of the following felonies:

(1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.

(2) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(5) Child molesting (IC 35-42-4-3).

(6) Child exploitation (IC 35-42-4-4(b)).

(7) Vicarious sexual gratification (IC 35-42-4-5).

(8) Child solicitation (IC 35-42-4-6).

(9) Child seduction (IC 35-42-4-7).

(10) Sexual misconduct with a minor (IC 35-42-4-9).

(11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)

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years of age.

(12) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(13) Dealing in methamphetamine (IC 35-48-4-1.1).

(14) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(15) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(16) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(17) Dealing in a counterfeit substance (IC 35-48-4-5).

(18) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10(b)).

(19) Possession of child pornography (IC 35-42-4-4(c)).

(d) A license may be suspended by the state superintendent as specified in IC 20-28-7-7.

SECTION 4. IC 20-28-5-9, AS ADDED BY P.L.246-2005, SECTION 160, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: Sec. 9. (a) An applicant **seeking to obtain or renew a license or certificate** must do the following:

~~(1) Submit a request to the Indiana central repository for limited criminal history information under IC 10-13-3.~~

~~(2) (1) Obtain a copy of the limited~~ **an expanded** criminal history **check** for the applicant. ~~from the repository's records.~~

~~(3) (2) Submit to the department the limited~~ **expanded** criminal history **check** for the applicant.

~~(4) (3) Submit to the department a document verifying a disposition that does not appear on the limited~~ **expanded** criminal history **check** for the applicant.

The department may not grant a certificate or license to, or renew the license or certificate of, an applicant who fails to submit an expanded criminal history check for the applicant to the department. For the purposes of this subsection, the department may accept a copy of an expanded criminal history check from an applicant if the criminal history check was performed not more than one (1) year before it is provided to the department.

(b) The department may deny the issuance **or renewal** of a license or certificate to an applicant who is convicted of an offense for which the individual's license may be revoked or suspended under this chapter.

(c) The department ~~must~~ **may not** use the information obtained under this section ~~in accordance with IC 10-13-3-29.~~ **for purposes:**

(1) other than those that relate to the application, licensing, or

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renewal process; or

(2) that deny the applicant any civil right to which the applicant is entitled.

(d) An applicant is responsible for all costs associated with meeting the requirements of this section **at the time of the applicant's initial application for licensure.**

(e) The employing school corporation is responsible for all costs associated with meeting the requirements of this section during the time of the applicant's employment.

SECTION 5. IC 20-33-8-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9.5. (a) A teacher may take any action concerning the teacher's school of employment or at a school activity of the teacher's school of employment that is reasonably necessary to carry out or prevent an interference with an educational function or school purpose.**

(b) A teacher is immune from civil liability for acts or omissions when carrying out or preventing an interference with an educational function or school purpose under this section.

(c) Subject to rules of the governing body and the administrative staff, a teacher may remove a student for a period that does not exceed five (5) school days from an educational function supervised by the teacher or another individual who is a school staff member.

SECTION 6. IC 20-33-8-10, AS ADDED BY P.L.1-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10. (a) A principal may take action concerning the principal's school or a school activity within the principal's jurisdiction that is reasonably necessary to carry out or prevent interference with an educational function or school purposes.**

(b) Subsection (a) allows a principal to write regulations that govern student conduct.

(c) A principal is immune from civil liability for acts or omissions when carrying out or preventing an interference with an educational function or school purpose.

SECTION 7. IC 20-33-8-11, AS ADDED BY P.L.1-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 11. (a) A:**

(1) superintendent; or

(2) member of the superintendent's administrative staff, with the superintendent's approval;

may take any action with respect to all schools within the superintendent's jurisdiction that is reasonably necessary to carry out

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1 or prevent interference with an educational function or school
2 purposes.

3 **(b) An individual described in subsection (a) is immune from**
4 **civil liability for acts or omissions when carrying out or preventing**
5 **an interference with an educational function or school purposes.**

6 SECTION 8. IC 34-30-2-84.7 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS:
8 [EFFECTIVE UPON PASSAGE]: **Sec. 84.7. IC 20-33-8-9.5 and**
9 **IC 20-33-8-10 (Concerning acts and omissions by school teachers**
10 **and principals when carrying out or preventing interference with**
11 **an educational function or school purpose).**

12 SECTION 9. An emergency is declared for this act.

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